IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2876 of 2005
To
FIRST APPEAL No. 2878 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)

Versus

SUKHIBEN BHARATBHAI PARMAR & 1 - Defendant(s)

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Appearance :

MR.R.M.CHAUHAN, ASST. GOVERNMENT PLEADER for Appellant(s) : 1,
MR VIJAY N RAVAL for Defendant(s) : 1,
None for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 30/11/2005

ORAL JUDGMENT

The appellant challenges the judgment and award rendered by the 4th Joint Civil Judge (S.D.), Godhra, Dist: Panchmahals in Land Acquisition Reference Cases No.263 to 265 of 1999 on 16/12/2002, disposed of by

common judgment by the Reference Court, as they arose out of common award delivered on 6/7/1998 by the Special Land Acquisition Officer. The lands acquired are situated in the outskirts of Village Boru in Taluka Kalol of Panchmahals District. The Reference Court came to a conclusion that the compensation awarded was not fair or adequate and, therefore, allowed the appeal partially. The land owners had demanded the compensation of Rs.20/- per square meter. However, the Special Land Acquisition Officer had awarded only Rs.5.70 ps. per square meter by way of compensation. Compensation was paid to the land owners which they had accepted under protest. The Reference Court after considering the previous incidents and previous awards, enhanced the compensation from Rs.5.70 ps. per square meter to Rs.17.70 ps. per square meter by adding Rs.12/- per square meter to the compensation awarded. The Reference Court awarded interest @ 12% per annum from the date of publication of notification under Section 4 (1) of the Land Acquisition Act, till the date of the award. The Reference Court also awarded solatium @ 30% with interest @ 9% for the first year and thereafter, @ 12% till the payment of compensation.

2.Aggrieved by the said awards, the Special Land Acquisition Officer, has preferred this appeal.

3.When the matter came up for hearing, learned Advocate, Mr.Raval, for the respondents No.1/1 to 1/5 has indicated that present case is covered by a decision of

this Court reported in **2001 (3) G.L.H. 655**, which has been followed by the Reference Court, and therefore, this appeal may not be entertained. He has also drawn attention of this Court to an order passed in Civil Application No.7621 to 7625 of 2004 in First Appeal (Stamp Number) No.2210 to 2214 of 2003, relating to lands of same village, where also the Division Bench of this Court, in order dated 9/3/2005, upheld the award rendered by Reference Court of compensation at Rs.17.70 ps. per square meter, in respect of lands of same village.

4. Learned Asst. Government Pleader, Mr.R.M.Chauhan, for the appellant has no answer and concedes to the fact that the present case is covered and would be governed by the decision of the Division Bench of this Court, whereby, identical compensation awarded in respect of lands of same village has been upheld.

5. In light of the above fact situation, this Court finds no merits in this appeal. The appeal must fail and stands dismissed accordingly.

6. Learned Advocate, Mr.Raval, however, has raised a

contention that the Reference Court has committed an error in awarding the interest on solatium @ 12% for period after one year. He has drawn attention of this Court to Section 34 of the Land Acquisition Act, 1894 and submitted that the Reference Court had no option but, to award interest @ 15% after completion of one year, in light of proviso to Section 34. Learned Advocate, therefore, submitted that this Court may award interest @ 15% per annum, instead of, 12% awarded by the Reference Court.

6.1Learned Asst. Government Pleader, Mr.Chauhan, has raised contention that the respondents No.1/1 to 1/5 have not preferred any appeal nor they filed any cross objection and therefore, this demand may not be entertained by this Court.

7.The objection raised by the learned Asst. Government Pleader, cannot be accepted, in light of the decision rendered by the Apex Court in the case of **Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, reported in 1991 S.C. 656,** and decision rendered by the Division Bench of this Court, following that decision in an unreported judgment in First Appeal No.908 of

2004 dated 27/4/2004 (Coram: Mr.Justice Kshitij R. Vyas and Mr.Justice K.S.Jhaveri) and, as such no separate appeal or cross objections are required to be filed by the original land owners (claimants), where the dispute or the claim is restricted only to interest part of the award.

8. On this aspect, if the award by the Reference Court is examined, the interest awarded is @ 9% for the first year and thereafter, @ 12% under the operative part of the order. In light of provisions contained in Section 34 of the Land Acquisition Act and, proviso thereto, the interest ought to have been awarded @ 15% per annum. Therefore, while dismissing the appeal, the appellant is directed to pay interest @ 9% for the first year and thereafter @ 15% for subsequent period till the payment is made on amount of solatium and compensation. No order as to costs.

(A.L.DAVE, J.)

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